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JAMES H. MCKENNEY,  
Clerk.

No. 95. 95

~~Brief of Greene for U. S.~~  
IN THE

Supreme Court of the United States  
~~Filed Nov. 4, 1898.~~

THE LAKE SHORE AND MICHIGAN SOUTHERN  
RAILWAY COMPANY, . . . Plaintiff in Error,

AGAINST

THE STATE OF OHIO, EX REL. GEORGE L. LAW-  
RENCE, . . . Defendant in Error.

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REPLY BRIEF OF PLAINTIFF IN ERROR.

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GEORGE C. GREENE,  
*Of Counsel for Plaintiff in Error.*

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# Supreme Court of the United States.

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THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR, *vs.* THE STATE OF OHIO, EX REL. GEORGE L. LAWRENCE, DEFENDANT IN ERROR.

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## REPLY TO BRIEF OF DEFENDANT IN ERROR.

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Under the first point in defendant's brief it is said:

"Neither was it (the statute in question) construed and held by the courts of Ohio to apply to the trains of plaintiff in error which were engaged in interstate commerce, nor the penalty imposed by the said statute inflicted upon plaintiff in error for failure to comply with its requirements by stopping any train or trains which were engaged in interstate commerce."

I submit that there is nothing in the record which supports this statement. There is certainly nothing in the judgment of the Supreme Court to that effect. No opinion was delivered in the Supreme Court. In the opinion of the Circuit Court delivered in the case, however, it was said:

"Although the act in question may and, as the railroad company now conducts its trains, does affect the transportation of persons traveling through the State of Ohio from one state to another, we are of the opinion that the act is not a regulation of commerce between states, although it might be void if Congress, with its paramount authority, should pass an act with which this is inconsistent."

It may be fair to assume that the Supreme Court, having written no opinion, adopted the opinion of the Circuit

Court, and if so, it recognized or admitted that the statute in question "does affect persons traveling through the State of Ohio from one state to another;" a conclusion entirely inconsistent with the statement above quoted from defendant's brief.

It is further stated in defendant's brief that "the provisions of the section in question, do require that three trains daily shall stop, if so many are run; but it does not prevent the railroad company from running as many through trains that are not required to stop at these specified stations as they may choose, providing, however, that if three or more trains are run, at least three of them shall stop."

The record herein (pages 17, 18) shows that at the time and on the day it is claimed the act was violated, the railway company operated and run daily only three regular trains carrying passengers west-bound, and four trains east-bound, and but one of such trains each way was not engaged in interstate commerce, or did not have upon them passengers who had paid their fare and were to be carried between Chicago and Buffalo.

It seems to be the contention of the defendant in error that the statute means that if the railroad company runs three interstate trains it must stop them all, or run in addition thereto three other trains which shall stop as required, whether the business or interests of the public require them or not. This I submit is not a correct construction of the statute, but, on the contrary, it requires that if the company runs three or more regular passenger trains daily, three of them shall stop. Here the company ran three west-bound and four east-bound, and but one of them stopped, the others all being interstate trains, and the penalty was imposed by the judgment herein for not stopping three of those trains each way. If the contention of the defendant in error stated in his first point be

sustained it would in effect be held that the state legislature has power to declare and require that no railroad company may run trains engaged in interstate commerce through the state unless it at the same time runs an equal number of local trains, and stop them at all stations. Can it be said that a law which imposes or would impose such conditions upon a railroad company's interstate traffic, does not impose any burden upon interstate commerce? I submit that the state cannot lawfully impose any duties, obligations, burdens or penalties upon a railway company dependent upon its doing interstate business, or its regulations relating thereto.

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It is further contended by defendant "that although a railroad company may engage in interstate commerce, yet the state granting that company its charter may regulate and control it in all local and domestic matters."

It seems to be the defendant's contention that because the state creates or has power to create or destroy a railway corporation, it may control and regulate its interstate business. If this be conceded, the power of Congress in that behalf is subordinate to that of the state, and the state would have power to prohibit railroad companies engaging in interstate commerce. The defendant company, as appears by the record (page 17) is a corporation organized under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, and has a continuous line of railroad extending from Chicago to Buffalo.

The act of June 15, 1866 (U. S. Rev. Stat., p. 1022, sec. 5258) provides, "Every railroad company in the United States \* \* \* is hereby authorized to carry upon and over its road, boats, bridges and ferries, all passengers, mails, freight and property on their way through any state to another state, and to receive compensation therefor and to connect with roads of other states so as to form

continuous lines for the transportation of the same to the places of destination." I submit that Congress, by this act, has legislated upon the subject matter of interstate commerce and transportation by railway companies, and has imposed certain duties and conferred certain rights upon interstate railroad companies, and such duties and rights are paramount and the state cannot lawfully interfere with, burden, regulate or control them.

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The contention of defendant in error, stated in the third point, that the power of Congress over the regulation of interstate commerce is not exclusive, and that it is no more exclusive than its power to levy taxes, is so clearly contrary to repeated decisions of this court that it does not seem proper to answer the proposition at length, but I may be permitted to quote the language of the Court from the opinion of Mr. Justice Fuller in the Rohrer case, 140 U. S. 545:

"The power of Congress to regulate commerce among the several states, when the subjects of that power are national in their nature, is also exclusive. The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free, except as Congress might impose restraint. Therefore it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several states."

But it is contended, as stated in the brief, that, "in the absence of any action on its part, the states may within their own limits exercise all the authority in that behalf that is necessary to the interests of good government."

This contention was well answered by Mr. Webster in his argument in *Gibbons vs. Ogden*, 9 Wheat. 1-17. He said :

"The states may legislate, it is said, whenever Congress has not made a plenary exercise of its power. But who is to judge whether Congress has made this plenary exercise of power? It has done all that it deemed wise; and are the states now to do whatever Congress has left undone? Congress makes such rules as in its judgment the case requires, and those rules, whatever they are, constitute the system. All useful regulation does not consist in restraint; and that which Congress sees fit to leave free is a part of the regulation as much as the rest."

Not only has Congress acted and legislated in relation to interstate railroads and trains, as hereinabove stated, but by the Interstate Commerce Act, and the act providing for equipment, it has provided rules and regulations for the control of railroads and railroad trains, and has constituted a tribunal, the Interstate Commerce Commission, with authority to make other rules and regulations.

So if it should be held, contrary to former decisions, that until Congress acts the state has power to regulate, it would not aid the defendant in error, because here Congress has acted upon the subject matter, and established certain rules and regulations, and beyond those it is to be presumed the will of Congress is there shall be no other or further regulations until it sees fit to establish them.

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